

#42

DOCKET NO.: 20720-95592

PATENT

CERTIFICATE OF FACSIMILE  
37 C.F.R. §1.8

I hereby certify that this correspondence is being facsimiled to: Office of  
Petitions, Mr. Steven Brantley, Assistant Commissioner for Patents, Washington, D.C.  
20231 at Facsimile No. 703/308-6916, on Friday, November 19, 1999.

Peter J. Manso

11-19-99  
Date

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bova  
Serial No.: 08/368,378  
Filing Date: 1/14/95  
Group Art Unit: 1615  
Examiner: J. Venkat  
Title: *Nicotinic Acid Compositions for Treating Hyperlipidemia and Related  
Methods Therefor*

Attention: Office of Petitions  
Mr. Steven Brantley  
Assistant Commissioner of Patents  
Washington, D.C. 20231

November 19, 1999

Dear Sir:

**CONTINUE PETITION TO REVIVE UNDER 37 C.F.R. §1.137(b);**  
**WITHDRAW PETITION TO REVIVE UNDER 37 C.F.R. §1.137(a)**

This is a follow-up to our telephonic conference of today regarding the above-identified application for U.S. patent.

In order to expedite the petition process, please consider the Petition to Revive, that was filed via facsimile on October 15, 1999 at Facsimile No. 703-308-6916 in the above-identified application for U.S. patent, under only 37 C.F.R. §1.137(b).

Thus, please withdraw the Petition to Revive under 37 C.F.R. §1.137(a).

For convenience and evidentiary proof that the Petition to Revive was filed in the above-identified application for U.S. Patent on October 15, 1999, the Petition to Revive along with all papers and fee that were filed on October 15, 1999, and the facsimile confirmation sheet are

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faxed herewith.

Expedited handling of this Petition to Revive under 37 C.F.R. §1.137(b) is earnestly solicited.

Respectfully submitted,

For AKERMAN, SENTERFITT & EIDSON

By

Peter J. Manso

Registration No. 32,264

Date: November 19, 1999

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Attorney Docket No. 20720-95592

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

## CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence and fee is being facsimile transmitted to the Office of  
Petitions, Patent and Trademark Office (Fax No. (703) 308-6916) on October 15, 1999.

Peter J. Manso

October 15, 1999

Name of person signing this paper or fee

Date

  
Signature of person signing this paper or fee

In re Application of:

Dave Bova

Serial No.:

08/368,378

Filing Date:

January 14, 1995

Group Art Unit:

1615

Batch No.:

V45

Examiners:

J. Venkat

Title:

*Nicotinic Acid Compositions for Treating Hyperlipidemia and  
Related Methods Therefor*

Attn: Office of Petitions  
Assistant Commissioner of Patents  
Box DAC  
Washington, D.C. 20231

**PETITION TO REVIVE FOR FAILURE TO TIMELY  
PAY ISSUE FEE UNDER 35 U.S.C. §151 and 37 C.F.R. §1.137(a) or (b)**

This petition to revive and withdraw any holding of abandonment of the above-identified application for U.S. patent for failure to timely pay issue fee is made under 35 U.S.C. §151 and 37 C.F.R. §1.137(a). In the alternative, this petition to revive and withdraw any holding of abandonment of the above-identified application for U.S. patent for failure to timely pay issue fee is made under 37 C.F.R. 1.137(b).

The above-identified application for U.S. patent became abandoned for failure to timely pay the issue fee on or before October 7, 1999. The abandonment date is October 8, 1999.

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Applicant respectfully submits that the abandonment of the above-identified application was unavoidable. The entire delay in filing the required reply, i.e., paying the issue fee, from the due date for the reply until the filing of this petition was unavoidable and unintentional.

In docketing the date upon which the issue fee was due, the *undersigned* inadvertently docketed the issue fee due date as November 7, 1999, as opposed to October 7, 1999. The error was discovered by the *undersigned* on Thursday, October 14, 1999, in connection with the *undersigned's* effort to reach Examiner Venkat by telephone on same date following her return from her extended vacation in connection with a related application. The *undersigned* has been registered to practice before the U.S. Patent and Trademark Office since about 1984, and he has been admitted to practice as an attorney since about 1982. The *undersigned* is well versed with respect to U.S.C., Title 35 and C.F.R., Title 37. The *undersigned* well knows that the time period for paying an issue fee is statutorily defined as three months from the issue date pursuant to 35 U.S.C. §151, which statutory period cannot be extended. The error in recording November, rather than October, was simply clerical in nature and totally inadvertent. Because the *undersigned* relied upon his own docketing error, the failure to pay the issue fee was the cause for the delay. Accordingly, the entire delay in filing the required reply, i.e., paying the issue fee, from the due date for the reply until the filing of this petition was unavoidable and unintentional was unavoidable and unintentional.

It is therefore respectfully submitted that the failure to pay the issue fee was totally unavoidable under 35 U.S.C. §151 and/or 37 C.F.R. §1.137(a). Thus, kindly charge deposit account number 50-0951, the appropriate fee for this petition under 37 C.F.R. §1.137(a) and 37 C.F.R. §1.17(l). If, however, it is determined that the delay was unintentional under 37 C.F.R. §1.137(b), kindly charge deposit account number 50-0951 the appropriate fee for this petition under 37 C.F.R. §1.137(b) and 37 C.F.R. §1.17(m) to avoid any further delay.

In the event a terminal disclaimer is required pursuant to 37 C.F.R. §1.137(c), a Terminal Disclaimer is filed herewith which disclaims a terminal part of the term of the patent equivalent to the period of abandonment of the above-identified application or on any application that contains a specific reference under 35 U.S.C. §§120, 121 or 365(c) to this application. Please file the Terminal Disclaimer faxed herewith in the above-identified application for U.S. patent, only if mandated by 37 C.F.R. §1.137(c) under these circumstances. Please charge deposit

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account number 50-0951 any fee that may be due for filing, if necessary, a Terminal Disclaimer under 37 C.F.R. 1.137(c). A duplicate of this paper is faxed herewith.


**Applicant has filed in connection with the above-identified application for U.S. patent, the appropriate small entity status form, and it has been determined by the U.S. Patent and Trademark Office that Applicant qualifies as a small entity under 37 C.F.R. §§1.9(f) and 27(c).**

Also faxed herewith in duplicate is Part B --Issue Fee Transmittal, which has been executed by the *undersigned* and which authorizes the \$605.00 issue fee to be charged to deposit account number 50-0951.

Applicant has also faxed herewith a paper entitled "Comments on Statements for Reason for Allowance" for filing in the above-identified application for U.S. patent, which responds to the Examiner's reasons for allowance.

If you should have any questions or require additional information or clarification, Applicant respectfully requests that you contact the attorney of record herein, Peter J. Manso, at the phone numbers noted below at your earliest convenience.

Respectfully Submitted,

  
Peter J. Manso  
Reg. No. 32,264

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